

## **Remarks**

### **I. Status of the claims**

Claims 2, 4, 5, 8, 9, 13, 17-22, 24 and 34 have been cancelled and claims 1 and 6 have been amended. Accordingly, claims 1, 3, 6, 7, 10-12, 14-16, and 23, 25-33 and 35 are pending. Claim 1 has been amended to further define the lipid and aqueous phases. Specifically, the lipid phase has been further defined as comprising (a) at least 50% w/w of  $\underline{a}$  C<sub>12</sub>-C<sub>24</sub> fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C<sub>12</sub>-C<sub>50</sub> fatty alcohols; (c) from about 1 to about 30% w/w of C<sub>14</sub>-C<sub>40</sub> fatty acid; (d) from about 1 to about 30% (w/w) of a component selected from C<sub>14</sub>-C<sub>30</sub>-dialkyl ethers, C<sub>14</sub>-C<sub>30</sub>-dialkyl carbonates, C<sub>4</sub>-C<sub>34</sub>-dicarbonic acids, C<sub>12</sub>-C<sub>30</sub>-hydroxyfatty alcohols and mixtures thereof; and (e) from about 0.1 to about 5% w/w of a water-in-oil emulsifier having an HLB-value in the range of from 1 to 8 and the aqueous phase has been further defined as comprising from about 0.1 to about 5% w/w of an oil-in-water emulsifier having an HLB-value in the range of from 8 to 18. Support can be found in the specification at least at page 34, lines 20-24; page 55, lines 16-28; page 57, lines 19-22; page 58, lines 15-18; and in original claims 17 and 24. No new matter has been introduced by this amendment.

### **II. Claim Objections**

The Examiner objected to claims 1 and 6 in view of typographical errors in these claims. Claim 1 has been amended to replace "as" with "by" as suggested by the Examiner and claim 6 has been amended to more clearly define the glyceride. Accordingly, the objection should be withdrawn.

### **III. Rejections Under 35 U.S.C. § 112**

The Examiner rejected claims 1, 3, 6-8, 10-12, 14-17, 23-33 and 35 as being indefinite. Specifically, the Examiner objected to the language defining the at least one oil or wax component. Applicants have amended claim 1 to more clearly define the claimed invention. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **IV. Rejection Under 35 U.S.C. § 102(b)**

The Examiner rejected claims 1-33 and 35 under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 6,153,208 ("McAtee"). Applicants respectfully traverse this rejection.

As amended, claim 1 relates to a cosmetic, personal care, or cleansing product comprising an applicator other than porous or absorbent sheet where to an aqueous and a lipid phase have been applied and which has been dried. The lipid phase contains (a) at least 50% w/w of a C<sub>12</sub>-C<sub>24</sub> fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C<sub>12</sub>-C<sub>50</sub> fatty alcohols; (c) from about 1 to about 30% w/w of C<sub>14</sub>-C<sub>40</sub> fatty acid; (d) from about 1 to about 30% (w/w) of a component selected from C<sub>14</sub>-C<sub>30</sub>-dialkyl ethers, C<sub>14</sub>-C<sub>30</sub>-dialkyl carboxylates, C<sub>4</sub>-C<sub>34</sub>-dicarboxylic acids, C<sub>12</sub>-C<sub>30</sub>-hydroxyfatty alcohols and mixtures thereof; and (e) from about 0.1 to about 5% w/w of a water-in-oil emulsifier having an HLB-value in the range of from 1 to 8. At least one of the lipid phase or aqueous phase contains one or more active substances selected from the group consisting of anti-microbials, anti-inflammatory agents, anti-irritating compounds, anti-itching agents and anti-perspirant. The aqueous phase is present in an amount of from about 1 to about 10 gram per 1 gram of substrate and comprises from about 0.1 to about 5% w/w of an oil-in-water emulsifier having an HLB-value in the range of from 8 to 18. The melting point or melting range of the lipid phase is above 25°C, and the lipid phase is present in an amount of from about 0.06 to about 0.8 grams per 1 gram of substrate. The lipid phase is insoluble in the aqueous phase and the lipid phase and said aqueous phase do not form

one phase or a continuous phase once on said applicator until used by a consumer as a cosmetic, personal care, or cleansing product.

McAtee relates to a disposable, single use personal care cleansing and conditioning article comprising: (A) a water insoluble substrate, wherein at least a first portion of said substrate is wet extensible and at least a second portion of said substrate is less wet extensible than said first portion, and (B) at least one lathering surfactant added onto or impregnated into the substrate. McAtee discloses the inclusion of a hardening material which can include some of the components recited in Applicants lipid phase. However, there is no teaching or suggestion of the specific lipid phase comprising (a) at least 50% w/w of a C<sub>12</sub>-C<sub>24</sub> fatty acid mono-, di-, or triglyceride; (b) from about 1 to about 40% w/w of C<sub>12</sub>-C<sub>50</sub> fatty alcohols; (c) from about 1 to about 30% w/w of C<sub>14</sub>-C<sub>40</sub> fatty acid; (d) from about 1 to about 30% (w/w) of a component selected from C<sub>14</sub>-C<sub>30</sub>-dialkyl ethers, C<sub>14</sub>-C<sub>30</sub>-dialkyl carbonates, C<sub>4</sub>-C<sub>34</sub>-dicarbonic acids, C<sub>12</sub>-C<sub>30</sub>-hydroxyfatty alcohols and mixtures thereof; and (e) from about 0.1 to about 5% w/w of a water-in-oil emulsifier having an HLB-value in the range of from 1 to 8 now recited by the present claims. Accordingly, McAtee fails to anticipate or render obvious the present claims and the rejection should be withdrawn.

#### **V. Provisional obviousness-type double patenting rejection**

The Examiner has set forth four separate obviousness-type double patenting provisional rejections over co-pending Application Nos. 10/521,070; 10/520,970; and 0/541,950. As the co-pending Applications are still pending, Applicants keep the decision with respect to the obviousness-type double patenting rejection in abeyance until there is further clarity with respect to what claims will be granted in the present application and in the co-pending applications.

#### **VI. Conclusion**

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants'

representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below. If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J2126USNP/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J2126USNP/JPB.

Respectfully submitted,  
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